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REMARKS

By this Amendment, claims 2, 4, 6-9, 11, 35, 40, and 41 have been cancelled. Claims 42-49 are newly added. Supports for the new claims can be found throughout the application, for example, page 9, line 22 to page 11, line 7. After the amendment, claims 42 - 51 are presented for further examination. Applicants respectfully submit that no new matter has been added.

Telephonic Interview

Applicants would like to sincerely thank the Examiner for taking the time to participate in a telephonic interview with Applicants' representatives, Dale Carlson and Wanli Wu on January 21, 2011 regarding this application.

During the phone interview, the section 112, first paragraph rejection, as well as US Pat. No. 5,540,860 to Hosseini et al. were discussed. Also discussed were instant invention and possible claim amendments to address the rejections.

Outstanding Rejections

1. Claims 2, 4, 6-9, 11, 35, 36, 40, and 41 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.
2. Claims 2, 4, 6-9, 11, 35, 36, 40, and 41 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Pat. No. 7,026,308 to Gavin et al.
3. Claims 2, 4, and 6-9 were rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Pat. No. 5,540,860 to Hosseini et al. alone or further in view of the specification and examples to demonstrate inherency.
4. Claims 2, 4, 6-9, 11, and 41 were rejected under 35 U.S.C. 103(a) as being obvious over Hosseini et al. '860 alone or in view of the specification to demonstrate inherency and U.S. Pat. 5,342,437 to Gavin et al.

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5. Claims 2, 4, 6-9, 35, 36, and 40 were rejected under 35 USC 103(a) as being obvious over Hosseini et al. '860 alone or in view of the specification to demonstrate inherency and Kappock et al. (US Pat. 5,518,774).

6. Claims 2, 4, 6-9, 35, 36, and 40 were rejected under 35 USC 102(e) as being anticipated by Mohseni et al. (US Pat. No. 6,465,015).

7. Claims 2, 4, 6-9, 11, 35, 36, 40, and 41 were rejected under 35 USC 102(e) as being anticipated by Polson et al. (US Pat. No. 6,017,936).

8. Claims 2, 4, 6-9, 11, 35, 36, 40, and 41 were rejected under 35 USC 103(a) as being obvious over Morris et al. (U.S. Pat. No. 5,916,947) in view of Hosseini (U.S. Pat. No. 5,540,860)

By this Amendment, claims 2, 4, 6-9, 11, 35, 36, 40 and 41 are hereby cancelled thus avoiding rejections 1 – 8.

New claims 42-49 are presented for further examination. Applicants submit that none of the cited references, alone or in combination, anticipate or make obvious the invention as presently claimed in claims 42-49.

Double Patenting Rejection

The claims of US Patent 7,026,308 to Gavin et al. are directed to topical compositions containing polyvalent metal salts of pyrithione, a metal ion source, a topical carrier, and a strong chelating agent selected from the group consisting of di or polyamines, diethylene triamine penta-acetic acid, tetraethylene triamine, ethylene diamine, diethylene triamine or salts thereof or mixtures thereof.

None of the claims of Gavin et al. are directed to any method of preparing anything, much less any method of making composite particles. Accordingly, the claims of US 7,026,308 does not disclose or suggest the instantly claimed invention.

Prior Art Rejections

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US Pat. No. 5,540,860 to Hosseini et al. discloses a method of making discrete particles of copper pyrithione. The method includes reacting a water soluble copper salt with a pyrithione salt. According to Hosseini et al., suitable copper salt includes copper chloride dihydrate, copper sulfate, copper carbonate, copper nitrate, copper acetate, and combinations thereof. See column 2, lines 59-64. Hosseini et al. does not disclose or suggest employing any of the copper-containing compound required by the instant claims even for the patentees' purposes of making discrete particles of copper pyrithione. Indeed, Hosseini et al. teaches away from utilizing surface oxidized copper powder, cuprous oxide, copper hydroxide, the copper-containing compound recited in the claim since these compounds are not soluble, thus utilizing these copper-containing compounds is against Hosseini et al.'s requirement for employing a soluble copper compound as a reactant for the disclosed process.

US Patent No. 5,342,437 relates to a process for providing a stable gel-free dispersion of zinc pyrithione plus cuprous oxide in paint. The process includes (a) adding zinc pyrithione, and cuprous oxide to a paint or paint base, (b) adding to the paint or paint base a carboxylic acid, and (c) adding a solution of polymer resins to the paint or paint base. The reference is completely silent as to any method of making any composite particles, much less the method of making the composite particles recited in the claims.

U.S. Patent 5,518,774 to Kappock et al. relates to a process for imparting in-can and dry film antimicrobial efficacy to an aqueous coating composition. The process includes (a) contacting the coating composition with a soluble pyrithione salt to impart to the composition in-can preservation against microbial attack, (b) contacting the composition with a metal-ion containing compound, and reacting at least a portion of the soluble pyrithion salt to form relatively insoluble pyrithione salt in order to impart dry film antimicrobial effectiveness to the coating composition. This patent does not disclose or suggest any method of making composite particles, much less the one as recited in the instant claims.

U.S. Patent 6,465,015 to Mohseni et al. and U.S. Patent 6,017,936 to Polson et al. are cited as 102(e) references in the Office Action. However, it is respectfully submitted that neither Mohseni et al. nor Polson et al. qualify as prior art under subsection 102 (e) as alleged in the

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outstanding Office Action. The reason is that the instant application 10/077,727 and patent 6,465,015 and 6,017,936 were, at the time the invention of instant application 10/077,727 was made, commonly owned by the same corporate entity, namely, Olin Corporation, a predecessor of current Assignee, Arch Chemicals, Inc. Accordingly, subsection (e) of Section 102 is not properly utilizable for purposes of qualifying Mohseni et al. and Polson et al. as prior art vis-a-vis the instant claimed invention.

U.S. Patent 5,916,947 to Morris et al. discloses an antifouling coating composition containing zinc oxide with has been surface coated by photosensitizer(s) which increase the capability of zinc oxide to absorb visible light. The reference does not disclose or suggest any composite particles having a core comprises essentially of a copper-containing compound, and said shell consists essentially of copper pyrithione formed from a transchelation reaction, much less any method of making such composite particles.

In view of the above discussion, it is respectfully submitted that the application is now in condition for allowance. Therefore, Applicants respectfully request consideration of the newly submitted claims, and an early receipt of a Notice of Allowance of the claims as amended.

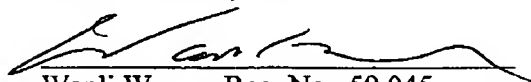
Any fees due with this Reply may be charged to our Deposit Account No. 23-1665 under Customer Number 27267.

Respectfully submitted,

David F. Gavin, et al.

Date:

2/3/2011


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